

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**ALWAYS TOWING & RECOVERY, INC., et al.,**

**Plaintiffs,**

**v.**

**Case No. 20-CV-919**

**CITY OF MILWAUKEE, et al.,**

**Defendants.**

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**DECISION AND ORDER ON DEFENDANTS'  
MOTION TO DISMISS COMPLAINT**

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Always Towing & Recovery, Inc., Apys Cars, Inc., Brew City Towing, LLC, SP Towing, LLC, and Adams Recycling, LLC sue the City of Milwaukee, the Milwaukee Department of Public Works, and the Milwaukee Police Department for alleged violations of the Sherman Act, the Clayton Act, and Wisconsin common law. (Docket # 1.) The defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) on July 14, 2020. (Docket # 5.) Although the plaintiffs timely filed a brief in opposition to the defendants' motion (Docket # 12), the plaintiffs simultaneously filed an amended complaint (Docket # 13). Pursuant to Fed. R. Civ. P. 15(a)(1)(B), a party may amend its pleadings once as a matter of course within twenty-one days of service of a Rule 12(b)(6) motion. Thus, the plaintiffs' amended complaint was timely filed.

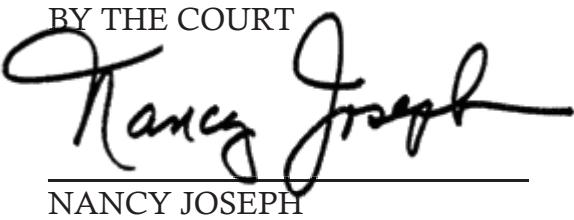
An amended complaint supersedes the previous complaint and becomes the operative pleading in the case. *Johnson v. Dossey*, 515 F.3d 778, 780 (7th Cir. 2008) ("When an amended complaint is filed, the prior pleading is withdrawn and the amended pleading is controlling."). As such, the filing of an amended complaint renders moot any pending

motion to dismiss. *See Aqua Fin., Inc. v. Harvest King, Inc.*, No. 07-C-015-C, 2007 WL 5404939, at \*1 (W.D. Wis. Mar. 12, 2007) (collecting cases). The defendants are free, however, to file a new motion in light of the plaintiffs' amended complaint should they continue to believe that plaintiffs' claims would not survive a challenge under Fed. R. Civ. P 12(b)(6). However, at this juncture, the defendants' motion to dismiss is denied as moot.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the defendants' motion to dismiss (Docket # 5) is **DENIED AS MOOT**.

Dated at Milwaukee, Wisconsin this 5<sup>th</sup> day of August, 2020.

BY THE COURT

A handwritten signature in black ink, appearing to read "Nancy Joseph".

NANCY JOSEPH  
United States Magistrate Judge